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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application of AT&T Corporation and Teleport Communications Group, Inc. for Transfer of Control	))))	CC Docket No. 98-24

To: The Commission

PETITION FOR APPROVAL WITH CONDITIONS TO PROTECT THE PUBLIC INTEREST

AT&T's Application for Commission approval of license transfers involved in its proposed acquisition of Teleport Communications Group, Inc. ("Teleport") does not meet the public interest requirements of the Communications Act. As BellSouth's Motion to Dismiss demonstrated, that Application made no real attempt to meet its burden of showing that the proposed transfers are in the public interest, and should be dismissed.

The proposed acquisition does underscore several major changes wrought by the Telecommunications Act of 1996. The fact that AT&T is willing to pay over $11 billion dollars for a competitive local exchange carrier shows that local markets are open. The proposed acquisition also highlights the value of providing bundled service offerings, at least to business customers. Regulatory barriers to Bell Operating Company (BOC) entry into the long distance market mean that the stimulus of market demand for packages of telecommunications services is effectively limited to the business side of the market, as carriers such as AT&T and WorldCom focus their dealmaking exclusively on the business customer. This is leading to the creation of a two-tiered telecommunications infrastructure. A broadband business network providing end-to-end service is emerging now, while the development of a similar residential network is hobbled by regulatory disincentives. AT&T's acquisition of Teleport may accelerate the emergence of this broadband business network, but it will further handicap the development of a residential counterpart.

AT&T's proposed acquisition will also place in AT&T's hands the long distance traffic and facilities of Teleport and ACC Corp. Given the "growing body of evidence that suggests that the nation's largest long distance companies are raising rates when their costs of providing service are decreasing," AT&T's acquisition of two competing long distance carriers raises substantial public interest concerns.[1]

I. AT&T'S APPLICATION DOES NOT CARRY ITS PUBLIC INTEREST BURDEN

BellSouth's Motion to Dismiss highlighted the inadequacy of AT&T's public interest showing. The page and a half the Application devotes to addressing the public interest is nothing more than platitudes and cannot be taken as a serious effort to even address the public interest.

The burden of proof is squarely on AT&T and Teleport to demonstrate that the proposed acquisition will "enhance competition" and benefit the public interest.[2] In recent merger cases, the Commission clarified that its public interest examination

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1 Letter from Chairman Kennard to Bert Roberts, CEO MCI, WC. Michael Armstrong, Chairman and CEO AT&T and William T. Esrey, Chairman and CEO Sprint, Feb. 26, 1998, at p.1.

2 Memorandum Opinion and Order, *Applications of NYNEX Corporation and Bell Atlantic Corporation For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, File No. NSD-L-96-10 (rel. Aug. 14, 1997) (*Bell Atlantic/NYNEX Order*) at ¶ 36.

includes whether a transaction furthers Commission policies encouraging competition, as well as its effects on preserving and enhancing universal service and accelerating private sector deployment of advanced telecommunications and information technologies and services.[3] Parties seeking to justify an acquisition because it creates efficiencies must quantify merger-specific savings, demonstrate that they will be passed on to consumers and that these efficiencies will outweigh any anticompetitive harm.[4]

Applicants must provide factual information to carry their burden of proof on the public interest issues. Applications in merger cases must provide information regarding the product and geographic markets involved, the identity of competitors, efficiencies, and affects on competition and the public.[5]

AT&T and Teleport have chosen to ignore these Commission requirements. They have not provided the factual information necessary for informed public comment and Commission evaluation. Nevertheless, there are areas in which the proposed transaction raises substantial public interest questions. Several of these areas are set out below.

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3 *Bell Atlantic/NYNEX Order* at ¶ 2; Memorandum Opinion & Order, *MCI Communications Corp. and British Telecommunications plc*, GN Dkt. No. 96-245, FCC 97-302 (rel. September 24, 1997)("*BT/MCI Order*").

4 *Bell Atlantic/NYNEX Order* at ¶ 158.

5 *Bell Atlantic/NYNEX Order; BT/MCI Order;* Memorandum Opinion and Order, *Pacific Telesis Group and SBC Communications, Inc.*, Rpt. No. LB 96-32, FCC 97-28 (rel. Jan 31, 1997).

II. AT&T'S OFFERING $11 BILLION FOR TELEPORT SHOWS THAT THE LOCAL MARKET IS OPEN

AT&T has offered to pay $11 billion for Teleport, the "nation's largest competitive local exchange carrier."[6] An investment of this size in a competitive local exchange carrier suggests that when it comes to putting money where its mouth is, AT&T sees local markets as very open to profitable competition.

Teleport's current revenues are approximately $500 million dollars.[7] During the six months ended June 30, 1997, Teleport's revenues grew 72% over the year earlier. Substantially all of this growth was from Teleport's provision of local service.[8]

In the six months preceding AT&T's offer, Teleport stock nearly doubled, far exceeding growth in the S&P 500 index. AT&T's $11 billion offer for Teleport, which includes healthy premiums reflected in the run up in Teleport's stock, is based largely on AT&T's financial assessment that Teleport's local revenues are likely to continue to increase exponentially. Thus, AT&T sees an "immense" opportunity from the acquisition, and predicts that it will add $450 million dollars to what the projected sales of AT&T and Teleport would have been individually in local markets during the first year

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6 AT&T - Teleport Application at 7.

7 Teleport Press Release, "Teleport Communications Group Inc. (TCG) Reported Fourth Quarter 1997 Revenues Of $150.4 Million. Revenues For The Year 1997 Were $494.3 Million," dated February 2, 1998, available at <http://www.tcg.com/tcg/investor/quarterly.html>.

8 Form S-3 Registration Statement of Teleport Communications Group, Inc., dated October 10, 1997, at 5 (Teleport Registration Statement).

after the deal closes.[9] Based on AT&T's announced schedule for closing, this would give the combined company local revenues of over $1 billion dollars in 1999 without including any of AT&T's current or projected local revenues.

AT&T's financial assessment of the opportunities for profit available in today's open local markets is shared by Wall Street and investors. As the attached chart highlights, $10,000 invested in CLEC stocks on January 1, 1996 would be worth over $65,000 as of March 6, 1998. The same amount invested in the stocks of the large local exchange companies would be worth not quite $16,000. AT&T's deal makers and accountants and Wall Street all come to the same conclusion: local markets are open and profits are there for the taking.[10] This unanimity should expose AT&T's regulatory posturing for what it is, a bald attempt to insulate its long distance business from full competition. AT&T's $11 billion dollar investment in a CLEC gives the lie to AT&T's public carping that local markets are closed.[11]

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9 Business Week, "An $11 Billion Bargain," January 26, 1998 (quoting C. Michael Armstrong, Chairman and CEO of AT&T).

10 CLECs have also been very successful in the financial markets, raising over $14 billion since the Telecommunications Act was passed. Telecommunications Reports, "CLECs Tell FCC of Success In Entering Local Markets," Feb. 2, 1998; Telecommunications Reports, "Upstart Telecom Carriers Seize Market Momentum To Raise Hundreds of Millions," Feb. 23, 1998.

11 The proposed acquisition of Teleport may also put to rest AT&T's complaints regarding wholesale discounts. Teleport has suggested that the right benchmark for wholesale discounts is five percent. TCG Position Paper, "Effect of Resale on Facilities-Based Competition in the Local Exchange Market," undated, at 4, available at <http://www.tcg.com/tcg/regulate/whitePaper/ resaleILEC.html>. Meanwhile, AT&T complains that the average 22 percent discount set by state public service commissions under the Act's guidelines is inadequate. Telecommunications Reports, "AT&T's Armstrong Says Bells' Discounts Delay Competition," Feb. 16, 1998 at 11.

III. THE PROPOSED TRANSACTION IS LIKELY TO HARM RESIDENTIAL CUSTOMERS

Teleport focuses exclusively on business customers. AT&T apparently intends to use Teleport's facilities for the same limited purpose. Thus, AT&T claims that the deal "will accelerate its efforts to bring end-to-end communications services to American businesses ... and enable us to provide businesses the any-distance services they want."[12]

Congress intended the Telecommunications Act of 1996 to create conditions allowing all carriers to compete to provide packages of "any distance" service because Congress viewed such packages as providing significant benefits to all consumers of telecommunications services.[13] But, there is no hint in the Act or its history that Congress intended that those packages should be created only for business customers, as AT&T and others seem bent on doing. At the time the Teleport deal was announced, AT&T sought to imply that residential plans were coming. "We have every intention of unfolding strategies to deal with the residential market, but this is a business-focused merger."[14] No residential strategy has appeared.

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12 AT&T Press release, "AT&T and TCG to Merge: TCG to become core of AT&T's local services unit," dated January 8, 1998, available at <http://www.att.com/ press/0198/980108.cha. html>.

13 See, e.g., 141 Cong. Rec. S713, S714 (daily ed. Feb. 1, 1996) (statement of Sen. Harkin).

14 C. Michael Armstrong, Chairman and CEO, AT&T, quoted in Telecommunications Reports, "AT&T Advances Local Business Strategy With $11.3 Billion Teleport Merger," January 12, 1998, at 6.

AT&T's intent to provide packages including local and long distance service for the business market only will worsen the growing disparity between business and residential networks, to the further detriment of residential consumers.[15] To some extent, AT&T is responding to the natural market demand for packages of telecommunications services that Congress recognized. However, the incentive for providers to do this on the residential side has been minimized by artificial regulatory restrictions on BOC entry into long distance and the provision of service bundles. BOCs, natural providers of bundled local and long distance to residential customers, have been barred by the Commission's interpretation of section 271 from providing those bundles. Incumbent long distance providers like AT&T have every incentive to maintain this bar against BOC competition by avoiding residential subscribers.[16] AT&T's acquisition of a business only carrier like Teleport fits neatly into this strategy. By acquiring Teleport and continuing its business-only focus, AT&T reaps profits available in the open local market while keeping the door to BOC competition in long distance markets closed. This is hardly what Congress intended.

The proposed acquisition will further harm residential customers by siphoning off universal service funds. AT&T projects savings of $500 to $800 million in 1999 by

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15 See, Petition of Bell Atlantic, *Petition of Bell Atlantic Corporation for Relief from Barriers To Deployment of Advanced Telecommunications Services*, CC Dkt. No. 98-11, filed January 26, 1998.

16 By restricting facilities-based service to business customers, AT&T avoids qualifying as a competing provider under section 271(c)(1)(A), and thereby opening the door to BOC entry into in-region long distance markets.

transferring traffic from the public switched network to Teleport facilities.[17] This will significantly reduce funds available to support universal service.

The effect of the Commission's artificial regulatory obstacles to BOC entry into long distance is that the stimulus of market demand for seamless packages of telecommunications services is limited to the business side of the market. Residential consumers and full competition lose out. AT&T's proposed acquisition of Teleport, like WorldCom's proposed acquisition of MCI, will accelerate the emergence of the business network while further handicapping the development of a residential counterpart.

IV. THE PROPOSED ACQUISITION WOULD ELIMINATE COMPETITION BETWEEN AT&T AND TELEPORT IN LONG DISTANCE MARKET

Although AT&T's Application sweeps the overlap between it and Teleport under the rug, Teleport is a facilities-based provider of long distance services that competes directly with AT&T. In September, 1997, Teleport competed with AT&T to provide long distance service in 22 major metropolitan markets.[18] Much of Teleport's offering is provided over a regional network that stretches from northern Virginia to southern New Hampshire.[19] In addition, Teleport recently acquired ACC Corp., another facilities-based provider of long distance service which competes by undercutting AT&T's prices.[20]

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17 Business Week, "An $11 Billion Bargain," January 26, 1998.

18 Teleport Registration Statement at 7.

19 *Id.* at 7.

20 ACC Corp. Form 10-K, filed March 27, 1997, at 2, 8.

AT&T intends to acquire Teleport's long distance business, including ACC Corp.[21] Given the history of tacit collusion in the long distance market, and the "growing body of evidence that suggests that the nation's largest long distance companies are raising rates when their costs of providing service are decreasing" recognized by Chairman Kennard,[22] allowing AT&T to acquire the long distance business controlled by Teleport poses real risks to consumers of long distance service. Given AT&T's record of not passing on access charge reductions, it is unlikely that any efficiencies from the deal will benefit consumers.[23]

V. BROAD SCALE BOC ENTRY WOULD REMEDY THE PROPOSED ACQUISITION'S ILL-EFFECTS ON THE PUBLIC

Conditioning approval of AT&T's Teleport acquisition on broad scale BOC entry into long distance markets would turn a public interest negative into a public interest positive. BOC entry into in-region long distance and competition to provide packages of telecommunication service will invigorate competition, bring consumers the benefits that Congress intended and avoid the harm this acquisition will inflict on consumers. To-date, the Commission's misinterpretations of section 271 have artificially closed the door to

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21 "ACC is part of this." Daniel E. Somers, Senior Executive VP and Chief Financial Officer, AT&T, quoted in Telecommunications Reports, "AT&T Advances Local Business Strategy With $11.3 Billion Teleport Merger," January 12, 1998, at 5.

22 Letter from Chairman Kennard to Bert Roberts, CEO MCI, Michael Armstrong, CEO AT&T and William T. Esrey, Chairman and CEO Sprint, Feb. 26, 1998, at p.1.

23 See Declaration of Professor Jerry A. Hausman, attached to Application by BellSouth for Provision of In-Region InterLATA Services in Louisiana, CC Dkt. No. 97-231 (FCC filed Nov. 6, 1997).

full competition that Congress opened. The current regulatory interpretation of the Act's provisions governing BOC long distance entry suggest no clear path or timeline to that entry. Through this acquisition, AT&T intends to exploit its ability to profit from the local market while foreclosing BOC competition in the long distance business. Thus, AT&T's new CEO hopes for an additional 18-24 months of regulatory protection so that "[we] can get our act together."[24]

BOCs will bring powerful new competitive forces to the broad market that will remedy the trend to serve only the business customer. BOC competition will benefit mass-market consumers. BOC competition will restore incentives to compete for residential customers and to invest in residential networks.

[24] Report of Janney Montgomery Scott Inc. (prepared by Anna Marie Kovacs, Ph.D.), Meeting with AT&T's Top Management, December 19, 1997 at 1.

VI. CONCLUSION

AT&T's desire to invest over $11 billion in Teleport is real evidence that the local market is open to profitable competition. AT&T's proposed acquisition of Teleport poses a substantial threat to the public interest due to the artificial barriers that have been erected to BOC entry into long distance and the beginning of full-scale long distance competition. Any approval of this acquisition should be conditioned on broad scale BOC entry into in-region long distance markets.

Respectfully submitted,

BELLSOUTH CORPORATION

By: ______________________

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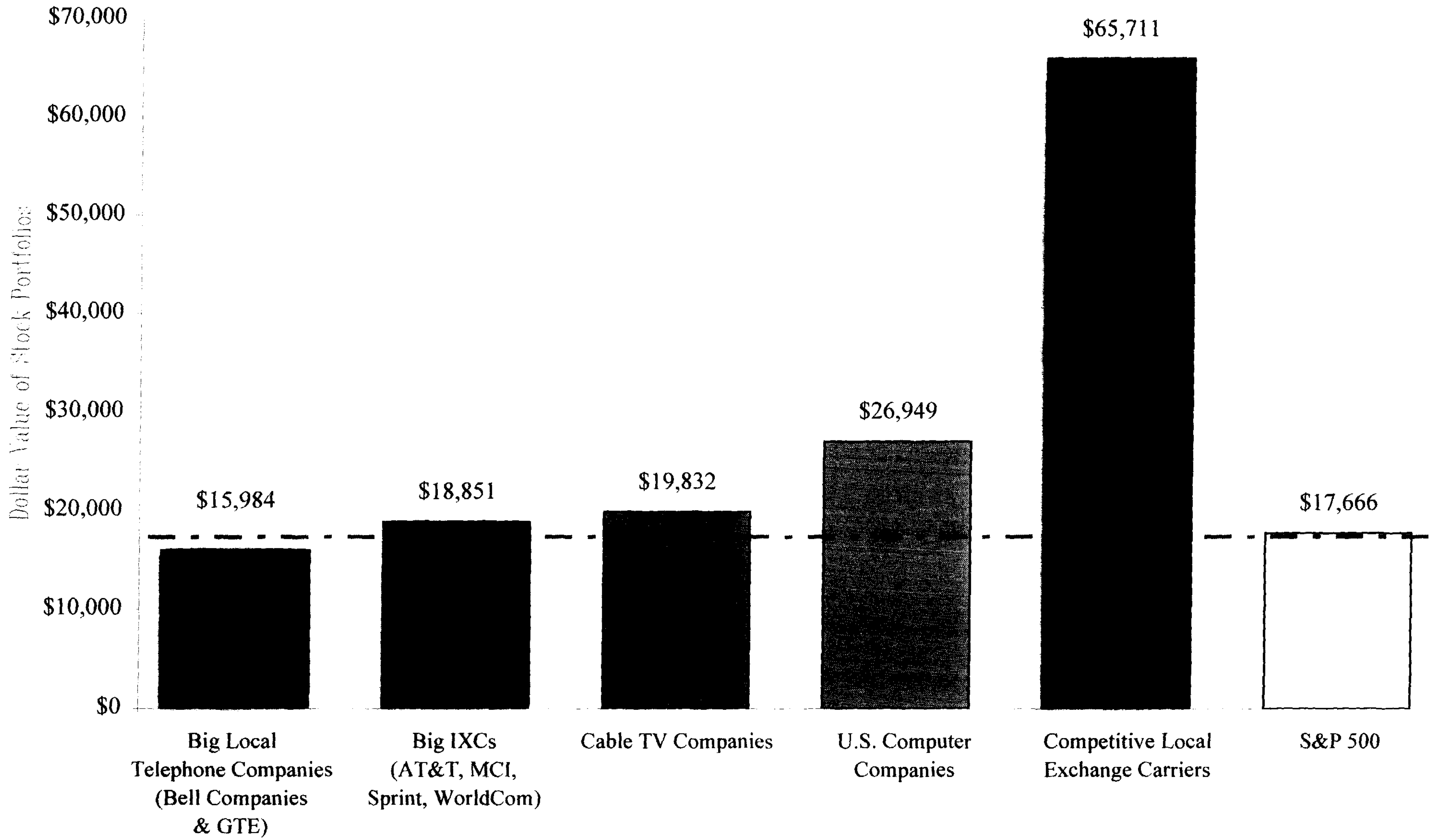
Date: March 31, 1998

Since Passage of the Telecom Act of 1996,
Only Local Telephone Company Stocks Have Underperformed the S&P 500

What $10,000 Invested on 1/1/96 Was Worth on 3/1/96



CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of March, 1998 served the following parties to this action with a copy of the foregoing **PETITION FOR APPROVAL WITH CONDITIONS TO PROTECT THE PUBLIC INTEREST** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties at the addresses listed below:

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